FORM NLRB-4701
(9-03)

NATIONAL LABOR RELATIONS BOARD

NOTICE OF APPEARANCE

International Union of Operating Engineers, Local No. 101

and

Springfield Ready Mix

CASE 14-CA-295548

☒ **REGIONAL DIRECTOR**

☐ **EXECUTIVE SECRETARY**
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

☐ **GENERAL COUNSEL**
NATIONAL LABOR RELATIONS BOARD
Washington, DC 20570

THE UNDERSIGNED HEREBY ENTERS APPEARANCE AS REPRESENTATIVE OF Springfield Ready Mix

IN THE ABOVE-CAPTIONED MATTER.

CHECK THE APPROPRIATE BOX(ES) BELOW:

☒ **REPRESENTATIVE IS AN ATTORNEY**

☒ **IF REPRESENTATIVE IS AN ATTORNEY, IN ORDER TO ENSURE THAT THE PARTY MAY RECEIVE COPIES OF CERTAIN DOCUMENTS OR CORRESPONDENCE FROM THE AGENCY IN ADDITION TO THOSE DESCRIBED BELOW, THIS BOX MUST BE CHECKED. IF THIS BOX IS NOT CHECKED, THE PARTY WILL RECEIVE ONLY COPIES OF CERTAIN DOCUMENTS SUCH AS CHARGES, PETITIONS AND FORMAL DOCUMENTS AS DESCRIBED IN SEC. 11842.3 OF THE CASEHANDLING MANUAL.**

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SIGNATURE: _____
(Please sign in ink.)

DATE: _____

[1] IF CASE IS PENDING IN WASHINGTON AND NOTICE OF APPEARANCE IS SENT TO THE GENERAL COUNSEL OR THE EXECUTIVE SECRETARY, A COPY SHOULD BE SENT TO THE REGIONAL DIRECTOR OF THE REGION IN WHICH THE CASE WAS FILED SO THAT THOSE RECORDS WILL REFLECT THE APPEARANCE.

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July 11, 2022

Rochelle K. Balentine
Field Attorney
National Labor Relations Board
Region 14
1222 Spruce Street
Room 8.302
Saint Louis, Missouri 63103-2829

Re: Springfield Ready Mix, Case No. 14-CA-295548

Dear Ms. Balentine:

As you know, this firm represents Springfield Ready Mix ("the Employer") in connection with the above-referenced matter. This letter constitutes the Employer's Position Statement and response to the Board's request for evidence,[1] based on the best information currently available and its current understanding of the Charges filed by International Union of Operating Engineers ("IUOE"), Local No. 101 ("Charging Party" or "the Union").

According to the Region's letter dated June 13, 2022, the Charging Party alleges that since on or about April 7, 2022, the Employer: (1) unlawfully withdrew recognition of the Union; (2) failed and refused to bargain a successor collective bargaining agreement ("CBA") with the Union; and (3) failed to maintain the status quo of the parties' expired CBA and unilaterally changed the terms and conditions of the bargaining unit employee without notice to or an opportunity to bargain with the Union. The Employer denies that it committed any unfair labor practice, preserves all defenses, and reserves the right to amend and/or supplement this Position Statement if necessary.

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[1] Regarding the documents requested in the Region's December 27, 2021 letter and January 5, 2022 email:

1. The Employer's monthly Central Pension Fund Remittance forms for the period of (b) (6), (b) (7)(C) (b) (6), 2021 to the present, which includes the roster of Unit employees for whom pension contributions were made, are attached as Exhibit 2.
2. Payroll records for the period of (b) (6), (b) (7)(C) 2021 to the present showing the hours worked by (b) (6), (b) (7)(C) performing Unit work for the Employer are attached as Exhibit 3.
3. Payroll records for the period of (b) (6), (b) (7)(C) 2021 to the present showing the hours worked by (b) (6), (b) (7)(C) performing Unit work for the Employer are attached as Exhibit 4.
4. Regarding the request for copies of Unit employee work schedules, the Employer states that the Unit employee's work schedule fluctuates and is not a set schedule.

I. FACTUAL BACKGROUND

A. The Employer and the Union Were Parties to a Section 8(f) Pre-Hire Agreement.

The Employer and the Union were parties to an agreement with effective dates from May 1, 2019 until midnight April 30, 2022 ("Agreement"). Exhibit 1. The Agreement was a pre-hire agreement entered into in accordance with Section 8(f) of the National Labor Relations Act ("NLRA"). The Employer is engaged primarily in the building and construction industry; it provides ready-mix concrete, one of the most widely used construction materials in the world, to its customers. (b) (6), (b) (7)(C) who was covered by the Agreement is engaged in the building and construction industry as (b) (6), (b) (7)(C) And the Union is a labor organization of which building and construction employees are members. Further, Article II § 1(g) of the Agreement states: "That in order to give the public the lowest possible *construction cost*, consistent with fair wages and fair conditions of employment for workers, jobs shall not be created to afford employment." Exhibit 1 at Art. II § 1(g) (emphasis added). The Agreement does not reference Section 9(a) of the NLRA, nor does it include a statement that the Union has presented evidence of majority support.

The Agreement includes the following provision:

> This Agreement shall be in force and effect from May 1, 2019, until midnight April 30, 2022. It shall continue in force and effect from year to year thereafter unless notice is given in writing sixty (60) days prior to the expiration date by the party desiring to amend, add to, or terminate this Agreement. Such notice shall state the nature of the changes requested in the Agreement and only those matters stated in the notice may be considered by the parties. All parties to this Agreement pledge themselves to meet within thirty (30) days from the date such notice is given.

Exhibit 1 at Art. XIV § 1.

B. (b) (6), (b) (7)(C) Is the Employer's (b) (6), (b) (7)(C) Employee.

Since at least (b) (6), (b) (7)(C) 2021, and likely much earlier, the Employer has employed (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) employee. (b) (6), (b) (7)(C) Until April 30, 2022, in accordance with its obligations under the Agreement, the Employer remitted contributions to the IUOE Central Pension Fund for (b) (6), (b) (7)(C) employee covered by the Agreement, (b) (6), (b) (7)(C) Exhibit 2.

(b) (6), (b) (7)(C) payroll records reflect that (b) (6), (b) worked (b) (6), (b) (7)(C) hours from (b) (6), (b) (7)(C) 2021 through (b) (6), (b) (7)(C) 2022. Exhibit 3 at 4. The Compensation Codes that the Employer uses in its payroll codes are as follows:

- 0002: Straight Time.
- 0015: Overtime.

- 0050: Vacation.
- 0070: Holiday.
- 0210: Bereavement Leave.
- 0700: COVID Pay.

The Employer also engaged (b) (6), (b) (7)(C) on two separate occasions in 2021 for a total of [redacted] hours to perform Unit work. Exhibit 4. (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) In fact, the Employer utilized (b) (6), (b) (7)(C) not to work alongside (b) (6), (b) (7)(C) but to work as [redacted] (b) (6), (b) (7)(C) while (b) (6), (b) (7)(C) was [redacted] (b) (6), (b) (7)(C) was [redacted] (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C) 2021. Exhibit 5 at 1. (b) (6), (b) (7)(C) worked [redacted] hours on (b) (6), (b) (7)(C) 2021 while (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) Exhibit 6 at 1. Again, [redacted] (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C) 2021. Exhibit 5 at 3. (b) (6), (b) (7)(C) worked [redacted] hours on (b) (6), (b) (7)(C) 2021 while (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) Exhibit 6 at 3. (b) (6), (b) (7)(C) has not otherwise worked for the Employer, and the Employer did not remit contributions to the IUOE Central Pension Fund on [redacted] behalf. *See* Exhibit 2.

The other two individuals listed in the Region's June 13, 2022 letter—(b) (6), (b) (7)(C) and [redacted] (b) (6), (b) (7)(C) —are employed by City Wide Construction Products, a sister company of the Employer. They have never been employed by the Employer.[2]

C. The Union Provided Notice of Its Desire to Amend the Agreement.

On February 17, 2022, the Union provided notice to the Employer of its desire to amend the Agreement:

> In accordance with provisions pursuant to the above referenced agreement, which expires April 30, 2022, this letter shall serve as official notification that we wish to open this Agreement for the purpose of negotiating a new Collective Bargaining Agreement.

Exhibit 8 at 1. In the Notice to Mediation Agencies that the Union filed with the Federal Mediation & Conciliation Service ("FMCS") that same day, the Union indicated that there was (b) (6), (b) (7)(C) who was covered by the Agreement. Exhibit 8 at 2.

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[2] City Wide apparently loaned (b) (6), (b) (7)(C) to the Employer for [redacted] hours, and in accordance with corporate formalities, it invoiced the Employer for this loan on (b) (6), (b) (7)(C) 2021. Exhibit 7. (b) (6), (b) (7)(C) remained employed by City Wide at all times and was never employed by the Employer. Regardless, (b) (6), (b) (7)(C) was not a permanent employee of the Employer.

II. ANALYSIS

A. The Unit Was a Stable (b) (6), (b) (7)(C) Unit.

It is a fundamental tenet of the NLRA that "the principle of collective bargaining presupposes that there is more than one eligible person who desires to bargain." *NLRB v. Seedorff Masonry, Inc.*, 812 F.3d 1158, 1162 (8th Cir. 2016) (quoting *Foreign Car. Ctr., Inc.*, 129 NLRB 319, 320 (1960)). As set forth above, the Employer has employed (b) (6), (b) (7)(C) employee—(b) (6), (b) (7)(C)—for all material times.

The single-person unit rule (also known as the "one-man unit rule," the "one-employee unit rule," and other similar iterations) provides that "when a unit consists of no more than a single permanent employee at all material times, an employer has no statutory duty to bargain and thus, will not be found in violation of the Act for disavowing a bargaining agreement and refusing to bargain." *Haas Garage Door Co.*, 308 NLRB 1186, 1187 (1992) (recognizing that the rule applies to in the 8(f) context). The single-person unit must be a stable single-person unit, not a temporary occurrence. *McDaniel Elec.*, 313 NLRB 126, 127 (1993).

The Unit at issue here is a stable (b) (6), (b) (7)(C) unit. The (b) (6), (b) (7)(C) employee that the Employer has employed since at least (b) (6), (b) (7)(C) 2021 is (b) (6), (b) (7)(C). Although (b) (6), (b) (7)(C) worked for the Employer on two occasions in 2021, (b) (6), (b) was engaged as (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) for (b) (6), (b) (7)(C) while (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) (in (b) (6), (b) (7)(C) 2021) and (b) (6), (b) (7)(C) (in (b) (6), (b) (7)(C) 2021). These short-term engagements as (b) (6), (b) (7)(C) did not make (b) (6), (b) (7)(C) a (b) (6), (b) (7)(C) employee, and they did not transform the existing (b) (6), (b) (7)(C) unit into (b) (6), (b) (7)(C) unit.[3]

As further evidence of the reality that (b) (6), (b) (7)(C) was not (b) (6), (b) (7)(C) employee and the Unit was (b) (6), (b) (7)(C) unit, the Employer did not make any pension contributions on behalf of (b) (6), (b) (7)(C) (b) (6), (b) (7)(C). *See* Exhibit 2 at 10–12, 20–21. This was so even though the Agreement required the Employer to pay into the IUOE Central Pension Fund $3.00 per hour "for each hour worked in the preceding month by all employees covered under this Agreement." Exhibit 1 at Art. X § 3. The reason why the Employer did not make pension contributions for (b) (6), (b) (7)(C) is clear: (b) (6), (b) was not an employee covered by the Agreement.

The evidence clearly demonstrates that the Unit at issue was (b) (6), (b) (7)(C) unit. Thus, the Employer "ha[d] no statutory duty to bargain" with the Union, the Employer was entitled to

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3 Nor did a single instance of the Employer borrowing (b) (6), (b) (7)(C) from City Wide in (b) (6), (b) (7)(C) 2021 transform (b) (6), (b) (7)(C) unit into (b) (6), (b) (7)(C) unit. (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) remained employed by City Wide, not the Employer, and the Employer was invoiced for the service. An employee borrowed from another company could not be the Employer's permanent employee.

disavow the Agreement and refuse to bargain with the Union, and such actions did not violate the NLRA. *Haas Garage Door Co.*, 308 NLRB at 1187.

B. The Union's Notice of Its Desire to Amend the Agreement Forestalled the Agreement from Automatically Renewing.

The National Labor Relations Board ("NLRB") has long held that "contracts do not automatically renew, at least as to provisions over which bargaining has been sought," unless the contract includes express language that notice of reopener was not intended by the parties as a termination. *Bridgestone/Firestone, Inc.*, 331 NLRB 205, 208 (2000). There is no such express language in the Agreement.

The Union sent a letter to the Employer dated February 17, 2022 and stated that the "letter shall serve as official notification that we wish to open this Agreement for the purpose of negotiating a new Collective Bargaining Agreement." . Since the Union had a contractual obligation to "state the nature of the changes requested in the Agreement," Exhibit 1 at Art. XIV § 1, and it stated pursuant to that obligation that it "wish[ed] to open this Agreement for the purpose of negotiating a new Collective Bargaining Agreement," Exhibit 8 at 1, the only reasonable conclusion is that the Union wished to reopen the entire Agreement. Consequently, the Union's notice of reopener forestalled the entire CBA from being automatically renewed. *Bridgestone/Firestone, Inc.*, 331 NLRB at 208 (finding that the entire Agreement fails to renew automatically when a union seeks to reopen and bargain over issues that are "tantamount to all mandatory subjects of bargaining"). That is, the entire Agreement expired by its terms at midnight April 30, 2022.

Stated differently, the Agreement contains an express condition precedent that had to be satisfied in order for it to "continue in force and effect from year to year." Exhibit 1 at Art. XIV § 1. That condition precedent is that each party refrain from giving written notice sixty (60) days prior to the expiration date of the party's desire to amend, add to, or terminate the Agreement. However, the Union gave such notice, thereby extinguishing the condition precedent and forestalling the Agreement from continuing in force and effect from year to year. *See Earhart Builders, Inc.*, 19-CA-23046, 1994 WL 197466, at *5–6 (NLRB Advice Memo Mar. 24, 1994) ("[T]he agreement here expressly contemplates that if notice is given that changes are desired, even if only as to a portion of the agreement, automatic renewal of the entire agreement is forestalled. Accordingly, we conclude that the Union's notice here of its desire to negotiate changes in its agreement with Earhart effectively forestalled renewal of the entire agreement . . . ."). Consequently, the entire Agreement expired by its terms at midnight April 30, 2022.

Because the Agreement was a Section 8(f) pre-hire agreement, upon its expiration the Union enjoy[ed] no presumption of majority status"—be it in a single-person bargaining unit or a multi-person bargaining unit—and either party was permitted to repudiate the 8(f) bargaining relationship. *John Deklewa & Sons*, 282 NLRB 1375, 1377–78 (1987). The Agreement terminated at its expiration, and the Employer lawfully withdrew recognition of the Union and

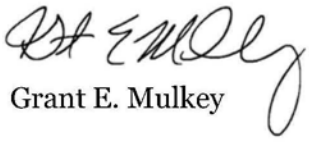
repudiated the expired pre-hire Agreement effective midnight April 30, 2022. These actions, which the Employer was entitled to take, did not violate the NLRA.

III. CONCLUSION

The Charging Party's claims have no merit. For the reasons detailed above, the Employer respectfully requests that the Board dismiss the Charges at issue in their entirety.

Sincerely,

Stinson LLP



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August 3, 2022

Rochelle K. Balentine
Field Attorney
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1222 Spruce Street
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Saint Louis, Missouri 63103-2829

Re: Springfield Ready Mix, Case No. 14-CA-295548

Dear Ms. Balentine:

As you know, this firm represents Springfield Ready Mix ("the Employer") in connection with the above-referenced matter. This letter constitutes the Employer's Supplemental Position Statement responding to the request for additional evidence/information set forth in your email dated July 27, 2022 in connection with the Charges filed by International Union of Operating Engineers, Local No. 101 ("Charging Party" or "the Union").

I. SUPPLEMENTAL RESPONSES

A. For the period of May 1, 2019 to present, payroll records showing the hours worked by employees performing bargaining unit work for the Employer.

RESPONSE: Payroll records for the period of May 1, 2019 to the present showing the hours worked by (b) (6), (b) (7)(C) performing Unit work for the Employer are attached as Exhibit 9, and selected daily hours are attached as Exhibit 10. Payroll records for the same period showing the hours worked by (b) (6), (b) (7)(C) performing Unit work for the Employer are attached as Exhibit 11, and [redacted] daily hours are attached as Exhibit 12. Payroll records for the period May 1, 2017 through December 31, 2020 showing the hours worked by (b) (6), (b) (7)(C) performing Unit work for the Employer are attached as Exhibit 13, and [redacted] daily hours for that period are attached as Exhibit 14. Taken together, Exhibit 13 and Exhibit 4, which was produced on July 11, 2022, constitute payroll records for (b) (6), (b) (7)(C) for the period of May 1, 2019 to the present. Finally, the Employer's monthly Central Pension Fund Remittance forms for 2019 and 2020 are attached as Exhibits 15 and 16.

B. Payroll records for (b) (6), (b) (7)(C)

RESPONSE: Payroll records covering (b) (6), (b) (7)(C) entire time working as (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) for (b) (6), (b) (7)(C) are included in Exhibits 4 and 13.

C. Documents, such as payroll records or other invoices to City Wide, which show how often (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) and/or other employees perform unit work at Springfield Ready Mix.

RESPONSE: After conducting a thorough search, the Employer has determined that there are no invoices other than the invoice produced as Exhibit 7 on July 11, 2022 showing that employees of City Wide Construction Products ("City Wide") performed Unit work for the Employer. There are no payroll records indicating whether the City Wide employee whom the Employer borrowed was (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) or someone else.

D. Clarification on Exhibit 7 explaining the invoice paid, how many (b) (6), (b) (7)(C) from City Wide were used, and how the unit price was derived.

RESPONSE: The invoice produced as Exhibit 7, dated (b) (6), (b) (7)(C) 2021, was for (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) whom City Wide loaned to the Employer for (b) (6), (b) (7)(C) hours. The invoice was for (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) who performed Unit work for the Employer earlier in (b) (6), (b) (7)(C) 2021. Notably, (b) (6), (b) (7)(C) 2021 was when (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) Exhibit 10 at 27. The unit price on the invoice was derived using the wage rate for City Wide (b) (6), (b) (7)(C) that was in effect at the time as required by the collective bargaining agreement between City Wide and the Union. (b) (6), (b) (7)(C) remained employed by City Wide at all times and was never employed by the Employer.

II. ANALYSIS

A. (b) (6), (b) (7)(C) Is the Employer's (b) (6), (b) (7)(C) Employee.

The additional documents provided with this Supplemental Position Statement confirm that (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) is (b) (6), (b) (7)(C) employee that the Employer has employed since at least (b) (6), (b) (7)(C) 2019, and likely going back to 2017. During the period (b) (6), (b) (7)(C) 2019 to present, (b) (6), (b) (7) (b) (6), (b) (7)(C) recorded (b) (6), (b) (7)(C) hours. Exhibit 9 at 8. In stark contrast, the (b) (6), (b) (7)(C) employees whom the Employer utilized when (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) worked significantly fewer hours. (b) (6), (b) (7)(C) worked a total of (b) (6), (b) (7)(C) hours for the Employer on a single day in 2019. Exhibit 12. And (b) (6), (b) (7)(C) worked a total of (b) (6), (b) (7)(C) hours on various occasions between (b) (6), (b) (7)(C) 2017 and (b) (6), (b) (7)(C) 2020. Exhibits 4 and 13.

The Employer engaged (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C) basis to perform (b) (6), (b) (7)(C) hours of Unit work on (b) (6), (b) (7)(C) 2019. Exhibit 12. (b) (6), (b) performed this work while (b) (6), (b) (7)(C) took (b) (6), (b) (7)(C) Exhibit 10 at 9. (b) (6), (b) (7)(C) did not work alongside (b) (6), (b) (7)(C) rather (b) (6), (b) worked while (b) (6), (b) (

(b) (6), (b) (7)(C) was unavailable. Aside from this single instance, (b) (6), (b) (7)(C) has not worked for the Employer.

Similar to the two instances when the Employer engaged (b) (6), (b) (7)(C) in 2021 to perform Unit work in (b) (6), (b) (7)(C) absence, the Employer used (b) (6), (b) (7)(C) services only a dozen times over a three-year span from (b) (6), (b) (7)(C) 2017 through (b) (6), (b) (7)(C) 2020. On virtually every occasion, (b) (6), (b) (7)(C) emporarily filled in for (b) (6), (b) (7)(C) while (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C)

- (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C) 2017, and (b) (6), (b) (7)(C) worked (b) (6), (b) (7)(C) hours that day. Exhibit 10 at 3; Exhibit 14 at 3.
- (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C) 2017, and (b) (6), (b) (7)(C) worked (b) (6), (b) (7)(C) hours that day. Exhibit 10 at 5; Exhibit 14 at 5.
- (b) (6), (b) (7)(C) took (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C) 2018, and (b) (6), (b) (7)(C) worked (b) (6), (b) (7)(C) hours that day. Exhibit 10 at 7; Exhibit 14 at 7.
- (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) on (b) (6), (b) (7)(C) 2019, and (b) (6), (b) (7)(C) worked (b) (6), (b) (7)(C) hours that day. Exhibit 10 at 11; Exhibit 14 at 9.
- (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) (b) (6), (b) (7)(C), 2019, and (b) (6), (b) (7)(C) worked (b) (6), (b) (7)(C) hours those days. Exhibit 10 at 13; Exhibit 14 at 9.
- (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) (b) (6), (b) (7)(C), 2019, and (b) (6), (b) (7)(C) worked (b) (6), (b) (7)(C) hours that day and 7.25 hours the next day (a Saturday). Exhibit 10 at 15; Exhibit 14 at 11.
- (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) 2020, and (b) (6), (b) (7)(C) worked (b) (6), (b) (7)(C) hours that day. Exhibit 10 at 17; Exhibit 14 at 13.
- (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) 2020, and (b) (6), (b) (7)(C) worked (b) (6), (b) (7)(C) hours that day. Exhibit 10 at 21; Exhibit 14 at 17.
- (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) (b) (6), (b) (7)(C), 2020, and (b) (6), (b) (7)(C) worked (b) (6), (b) (7)(C) hours that day. Exhibit 10 at 23; Exhibit 14 at 19.
- (b) (6), (b) (7)(C) was (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) 2020, and (b) (6), (b) (7)(C) worked (b) (6), (b) (7)(C) hours that day. Exhibit 10 at 25; Exhibit 14 at 21.

Twice, (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) had short overlaps in their work schedules. On (b) (6), (b) (7)(C) (b) (6), 2017—nearly five years ago—(b) (6), (b) (7)(C) clocked in at (b) (6), (b) (7)(C) to work (b) (6), (b) (7)(C) hours, and (b) (6), (b) (7)(C) clocked out at (b) (6), (b) (7)(C) after working only (b) (6), (b) (7)(C) hours. They overlapped 46 minutes. Exhibit 10 at 1; Exhibit 14 at 1. Similarly, on (b) (6), (b) (7)(C), 2020, (b) (6), (b) (7)(C) clocked in at (b) (6), (b) (7)(C) (b) (6), (b) to work (b) (6), (b) (7)(C) hours, and (b) (6), (b) (7)(C) clocked out at (b) (6), (b) (7)(C) after working (b) (6), (b) (7)(C) hours. They overlapped 30 minutes. Exhibit 10 at 19; Exhibit 14 at 15.

Only once did (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) work on the same day at the same time for a period of any substance. On (b) (6), (b) (7)(C), 2020, (b) (6), (b) (7)(C) worked [redacted] hours, from (b) (6), (b) (7)(C) to (b) (6), (b) (7)(C). (b) (6), (b) (7)(C) also began work that day at (b) (6), (b) (7)(C) and worked [redacted] hours until [redacted] Exhibit 10 at 19; Exhibit 14 at 15. However, utilizing (b) (6), (b) (7)(C) in this manner did not convert [redacted] from (b) (6), (b) (7)(C) employee to (b) (6), (b) (7)(C) employee.

B. The Unit Was (b) (6), (b) (7)(C) Unit.

The additional documents provided with this Supplemental Position Statement confirm that the Unit at issue here was (b) (6), (b) (7)(C) unit. (b) (6), (b) (7)(C) employee that the Employer has employed since at least (b) (6), (b) (7)(C) 2019, and likely back to 2017, is (b) (6), (b) (7)(C) Although the Employer engaged (b) (6), (b) (7)(C) once and (b) (6), (b) (7)(C) on various occasions, they were engaged as (b) (6), (b) (7)(C) to cover for (b) (6), (b) (7)(C) while [redacted] was (b) (6), (b) (7)(C) These short-term engagements as (b) (6), (b) (7)(C) did not make (b) (6), (b) (7)(C) or (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) employees, and they did not transform the existing (b) (6), (b) (7)(C) unit into (b) (6), (b) (7)(C) unit.

It is true that (b) (6), (b) (7)(C) and (b) (6), (b) (7)(C) have been on the clock at the same time for a total of seven hours and forty-six minutes dating back nearly five years. They have been on the clock together for only seven hours dating back to (b) (6), (b) (7)(C) 2019. This miniscule amount of time is a drop in the bucket compared to the (b) (6), (b) (7)(C) hours that (b) (6), (b) (7)(C) has performed Unit work [redacted] during that same period; indeed, these seven hours comprise only 0.079% of [redacted] (b) (6), (b) (7)(C) hours performing Unit during this period. The Employer submits that these scant hours of overlap do not—and cannot—transform this (b) (6), (b) (7)(C) unit into (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) unit. Such a conclusion belies the overwhelming evidence that this was (b) (6), (b) (7)(C) (b) (6), (b) (7)(C) unit comprised of (b) (6), (b) (7)(C) employee.

III. CONCLUSION

Because the Unit at issue was (b) (6), (b) (7)(C) unit, the Employer "ha[d] no statutory duty to bargain" with the Union, the Employer was entitled to disavow the Agreement and refuse to bargain with the Union, and such actions did not violate the NLRA. *Haas Garage Door Co.*, 308 NLRB 1186, 1187 (1992). The Charging Party's claims have no merit. For the reasons detailed above, as well as those set forth in the Employer's Position Statement dated July 11, 2022, the Employer respectfully requests that the Board dismiss the Charges at issue in their entirety.

Sincerely,

Stinson LLP

Grant E. Mulkey